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REMARKS

In the Office Action of January 25, 2006, claims 1-9 and 21-28 are currently pending. Claim 1 is herein amended solely for clarification reasons not for patentability reasons. Claim 21 is herein amended for an informality reason. Claims 21-28 were previously submitted and entered. Claims 22-27 are appropriately renumbered herein.

The Office Action states that claim 28 was misnumbered and that it has been renumbered as claim 27. Applicants submit that claim 22 was inadvertently not numbered in the Election and Preliminary Amendment of January 11, 2006. The non-numbering of claim 22 caused claims 23-27 to be misnumbered as claims 22-26. Thus, claim 22 is herein numbered as such and claims 23-27 are also correctly herein numbered. Claim 28 was not affected by the misnumbering and as such was and is correctly numbered.

The Office Action states that claims 21-27, Applicants assume claims 21-28, are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. The Office Action also states that the election was made without traverse. Applicants note that both the Restriction of December 19, 2005 and the Election do not specify what the different species are of originally filed claims 1-20. Applicants in electing claims 1-9 intended to elect the "method of operating an active night vision system" as opposed to "an active night vision system." Applicants did not intend elect the material covered solely by the method limitations of claims 1-9 and to not elect the material covered by the method limitations of claims 21-28. This is evident by the presentation of claims 21-28 in the Election. Should the Examiner have made clear the species upon which he felt were distinct and should those species been associated purely with the methodology of claims 1-20 then the Applicants would have traversed the restriction. Applicants were and are of the opinion that an active night vision system having certain elements or devices may be distinct from a method of operating the same and as such elected claims 1-9 without traverse.

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Referring to MPEP 808.01, 809.02(a) and 814, in which it states that the particular reasons relied upon by the Examiner for holding that the inventions as claimed are either independent or distinct should be concisely stated. A mere statement of conclusion is inadequate. Examiner must provide a clear and detailed record of the restriction requirement to provide a clear demarcation between restricted inventions. See *Geneva Pharms. Inc. v. GlaxoSmithKline PLC*, 349 F. 3d 1373, 1381, 68 USPQ2d 1865, 1871 (Fed. Cir. 2003). Each of the disclosed species must be clearly identified to which claims are to be restricted and reasons ought to be provided why the species are independent or distinct. In the Restriction of December 19th only the claims of each species were called out. The Restriction is silent as to the material covered by each species.

Applicants note that claims 21-28 depend from claim 1. Thus, claim 1 is the generic or linking claim. Also, if claim 1 is allowable, claims 21-28 are also allowable. Applicants understand that there was not an elected generic claim that was originally drafted that included each and every element of claim 21. However, this is irrelevant since the Applicants in adding claims 21-28 chose to elect the content contained therein, as well as the content of claims 1-9. Claims 21-28 were not added after an election, but rather were added in the submission of an election.

Also, note that in view solely of the methodology behind originally filed independent claims 1 and 19, that claim 19 includes all of the limitations of claim 1 and thus is not distinct from claim 1. Therefore, since Applicants elected the material in claim 1, they also elected at least some of the material in claim 19. Therefore, the restriction, at least with respect to claims 1 and 19, must have been based upon a system versus a method and not based upon the methodology contained within each of the claims.

Furthermore, note that there is no additional burden on the Examiner in examining claims 21-28 over that of claims 1-9, since claims 21-28 depend from claim 1, and all of which are related and contain method limitations associated with the operation of an active night vision system.

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As such, Applicants submit that claims 21-28 were elected and that claims 21-28 should not be withdrawn

Claims 1-6 and 9 stands rejected under 35 U.S.C. 102(b) as being anticipated by Skell et al. (U.S. Pat. No. 5,491,333).

Note that claim 1 is herein amended to clarify and expressly recite as a limitation, as opposed to stating in the preamble as originally filed, that the light source claimed is that of an active night vision system of a vehicle.

Skell is directed to a dispensing apparatus for controlling the filling of a cup. The apparatus of Skell detects the size of a cup and then proceeds to fill that cup with an appropriate amount of fluid. Skell is not directed to or related to an active night vision system.

Claim one recites the limitation of a light source of an active night vision system. Such a light source is not disclosed anywhere in the Skell reference. In order for a reference to anticipate a claim the reference must teach or suggest each and every element of that claim, see MPEP 2131 and *Verdegaal Bros. V. Union Oil Co. of California*, 814 F.2d 628. Thus, since Skell fails to teach or suggest each and every element of claim 1, claim 1 is novel, nonobvious, and is in a condition for allowance, at least in view of Skell. Therefore, since claims 2-6, 9, and 21-28 depend from claim 1, they too are also novel, nonobvious, and allowable for at least the same reasons.

Claims 1, 4-6, and 9 stand rejected under 35 U.S.C. 102(b) as being anticipated by Ishida (U.S. Pat. No 4,218,874).

Ishida is directed to an electronic metronome for providing a visual tempo indicator for a singer. Ishida, like Skell, also fails to teach or suggest the light source claimed. Thus, since Ishida fails to teach or suggest each and every element of claim 1, claim 1 is novel, nonobvious, and is in a condition for allowance, at least in view of Ishida. Therefore, since claims 4-6, 9, and 21-28 depend from claim 1, they too are also novel, nonobvious, and allowable for at least the same reasons.

Claims 1 and 4-9 stand rejected under 35 U.S.C. 102(b) as being anticipated by Johnson (U.S. Pat. No. 4,510,556).

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Johnson is directed to an electronic lighting apparatus for simulating a flame. Johnson discloses an artificial candle that has three LEDs, which are activated to mimic the flickering of a flame.

Again, Johnson, like Skell and Ishida, fails to disclose the light source claimed. Also, note that one purpose of the present invention is to minimize or eliminate image flickering. The purpose of Johnson is to provide a flickering effect. Thus, since Johnson fails to teach or suggest each and every element of claim 1, claim 1 is novel, nonobvious, and is in a condition for allowance. Therefore, since claims 4-9, and 21-28 depend from claim 1, they too are also novel, nonobvious, and allowable for at least the same reasons.

With respect to claim 21, Applicants further note that none of the relied upon references teach or suggest the generation of a pre-trigger signal having a first duty cycle in response to a first oscillating signal and a second oscillating signal, the detection of pulse endings of the first oscillating signal and the second oscillating signal, the generation of a post-trigger signal having a second duty cycle, and the operation of a light source in response to the second duty cycle. Each of the stated references only discloses the operation of an IR transmitter, a light, or an LED in response to a single oscillating signal. Thus, claim 21 is further novel and nonobvious for the above-stated reason. Claims 22-28 are also further novel and nonobvious for at least the same reasons.

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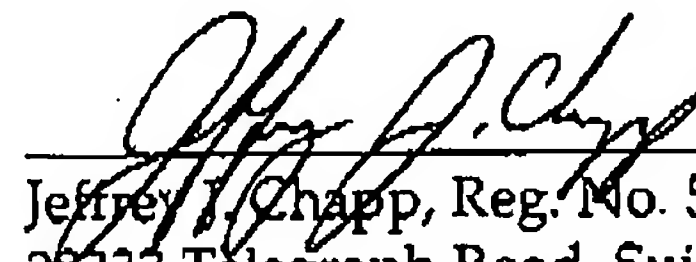
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In light of the amendments and remarks, Applicants submit that all the rejections are now overcome. The Applicants have added no new matter to the application by these amendments. The application is now in condition for allowance and expeditious notice thereof is earnestly solicited. Should the Examiner have any questions or comments, the Examiner is respectfully requested to contact the undersigned attorney.

Respectfully submitted,

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